

(2013) 05 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8862 of 2012

General Manager, M/s. U.P. State Sugar Corporation and
Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Citation : (2013) 5 ALJ 587

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : R.K. Srivastava and Yogendra Srivastava, for the Appellant; Gopal Narain, Shyam Narain and Sudhanshu Narain, for the Respondent

Judgement

Tarun Agarwala, J.—The petitioner is a sugar factory manufacturing crystal sugar by vacuum pan process. This sugar factory was initially known as Diamond Sugar Company Limited, Pipraich, which came into existence in the year 1932. In 1974, this Company was taken over by the U.P. State Sugar Corporation Ltd. It is alleged by the workers that they were working as Engineer Coolies since 1980 and that they were working from the start of the season till the end of the season. The work taken from them by the employers was seasonal in nature and that they were working continuously day in and day out for the last many years. It was alleged that the workers were doing the work of a seasonal employee, but, the benefit of a seasonal employee or of a permanent employee was not being given to them. On the other hand, they were being shown as substitutes or temporary employees.

2. The crushing season for the sugar year 1999-2000 started from 3rd December, 1999 when the workers in question were present at the factory gate, but, were not given work. It was alleged that some directions dated 5.11.1999 was issued by the management stating therein that temporary or substitute employees would not be given work. The workers also filed a chart, which was duly signed by the General Manager, which indicated the period the workers

worked from the year 1979 to 1998-99. It was also alleged that pursuant to the order of termination they have remained unemployed and, on account of being overage, they are unable to get any employment. The 43 workers, whose services were terminated on 3.12.1999, raised an industrial dispute with regard to the validity and legality of the order of termination dated 3.12.1999. All the 43 cases were connected and Adjudication Case No. 30 of 2003 was made the leading case.

3. Before the Labour Court, the employers contended that the 43 workers in question were not permanent or seasonal employees, but, were employed as substitutes or temporary during the crushing season, according to requirement of the work and for the period these workers had worked were paid the wages applicable to them. It was specifically contended that these workers had never worked for the entire season and that their services were never terminated. It was also contended that, if the need arose, work would be taken from them provided they apply for work.

4. In rejoinder, the workers reiterated their stand as contained in the written statement and further fortified their contention that they were never employed as substitutes or temporary and that they started working from the start of the season and worked till the end of the crushing season.

5. On behalf of the workman, evidence in the form of Provident Fund and bonus receipts were filed to prove that they were employed in a permanent capacity. The workers also filed a chart which was filed by the employers under the signature of the General Manager before the Deputy Labour Commissioner, which showed the period which the workers worked from 1991 to 1998-99. The workers also filed an application praying that the employers should be directed to produce the attendance and payment register from 1979 to 1998-99, which was objected to by the employers alleging that the documents sought were more than 20-25 years old, which are not traceable and that the employers are only obliged to keep the record of three years old. The award is silent as to what the Labour Court did on the application of the workman for production of the record.

6. Only one workman deposed on behalf of all the workers contending that the controversy involved in all the cases was the same and alleging that the workers were appointed at the start of the season and worked till the end of the crushing season and that Provident Fund and bonus was also paid to them. This workman further contended that even though they were working as seasonal employees, they were not being paid the retaining allowance by the employers.

7. On behalf of the employers, Sri Arun Kumar Srivastava, Accountant, deposed and contended that the workers in question were appointed as temporary workers and were paid for the number of days they had worked. The said witness contended that no seniority list of substitutes were prepared but admitted that the workers in question were working for more than 10 years and that they were paid wages of an unskilled workman. The said witness also admitted that

attendance of these workers was taken in Form 12 and further admitted the signatures of the General Manager on the chart, which were filed by the workers.

8. During the pendency of the adjudication proceedings before the Labour Court, the Pipraich unit of the Corporation became sick. The matter was referred to B.I.F.R. and eventually the unit closed down irrevocably w.e.f. 8.12.2008. It was contended that the workers in the Unit voluntarily retired and suitable compensation was paid to them.

9. The Labour Court after considering the material evidence on record held that the workers in question were working since long and even though these workers were shown as substitutes they were in fact working as seasonal employees. The Labour Court consequently held that they were entitled to be treated as seasonal workers. The Labour Court held that since these workers were working since long, the action of the respondents in terminating the services was wholly illegal and considering the fact that the factory is closed, the Labour Court awarded compensation @ Rs. 75,000/- per workman while allowing the claim of the workers. The petitioner, being aggrieved by the said award, has filed the present writ petition.

10. Heard Sri Yogendra Srivastava, the learned counsel for the petitioners and Sri. Sudhansu Narain for the respondents.

11. The learned counsel for the petitioners submitted that the reference order clearly indicated the terms of the dispute, namely, that the Labour Court was confined to questioning the validity and legality of the order of termination. The learned counsel submitted that the Labour Court had travelled beyond the terms of the reference order in deciding the nature of employment of the workers in question. The learned counsel submitted, that the fact, that the workers were working as the seasonal employees, was not the subject-matter of reference and therefore, the Labour Court could not have gone into this issue as to whether the workers were working as seasonal employees or whether they should be treated as seasonal employees nor was the Labour Court justified to award compensation on the strength of the finding that the workers were working as seasonal employees.

12. In furtherance of his submission, the learned counsel for the petitioners submitted, that no evidence was brought on record by the workers to prove that they were working as seasonal workers and, in the absence of any such evidence being brought on record, the Labour Court committed a manifest error in giving a finding that the workers in question were working as seasonal employees which is based on surmises and conjectures. It was also contended that the chart submitted by the workers was not proved nor the Labour Court has discussed this chart while coming to a conclusion that the workers had worked as seasonal employees. It was also contended that the Labour Court had wrongly placed the burden on the employer, which is against the settled principle of law, namely, that since the workers had raised the plea, the burden was upon them to prove

that they were working as seasonal employees or that they had worked from the start of the season till the end of the season.

13. In support of his submission the learned counsel for the petitioners has relied upon the decisions of the Supreme Court in Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another, , Mukand Ltd. Vs. Mukand Staff and Officers" Association, and Mahendra L. Jain and Others Vs. Indore Development Authority and Others, on the question that the Labour Court could not go beyond the terms of the reference order.

14. The learned counsel has placed reliance upon the decisions of the Supreme Court in Municipal Corporation, Faridabad Vs. Siri Niwas, , R.M. Yellatti Vs. The Assistant Executive Engineer, , Ganga Kisan Sahkari Chini Mills Ltd. Vs. Jaivir Singh, , on the question that burden to prove is upon the workman and, till such time the burden was not discharged, the onus could not be shifted upon the employers.

15. The learned counsel has also placed reliance upon a decision of the Supreme Court in U.P. State Sugar Corporation Ltd. Now Dowiala Sugar Co. Ltd. Doiwala through its Executive Director Vs. Niraj Kumar and Others, , which, in the opinion of the learned counsel, is identical to the present facts and the circumstances of the case and which related to the workers working in a sugar industry. In the said decision the Supreme Court found that there was no finding that the workman had worked in the previous full crushing season or in a second half of the crushing season and, therefore, the Labour Court and the High Court fell in error in holding that the workman was a seasonal employee.

16. Learned counsel for petitioners also placed reliance upon a decision of the Supreme Court in U.P. State Sugar and Cane Development Corporation Limited Vs. Chini Mill Mazdoor Sangh and Others, in which it was held that the workers working in a sugar factory was not claiming fitments but was claiming a promotional post, which could not be done or adjudicated by the Labour Court.

17. Having heard the learned counsel for the parties, the Court finds that the conditions of employment of the workers are governed under the statutory Standing Orders incorporating the conditions of employment of the workmen in Vacuum Pan Sugar Factory in U.P. Certain provisions of the standing orders are required to be considered. Clause B provides classification of different kind of workers. For facility, the said clause is extracted hereunder:

B. Classification of workmen--

I. Workmen shall be classed as

- (i) Permanent,
- (ii) Seasonal,
- (iii) Temporary,

- (iv) Probationers,
- (v) Apprentices, and
- (vi) Substitutes.

(I) A "Permanent Workman" is one who is engaged on work a permanent nature, lasting throughout the year and has completed his probationary period:

Provided that the workmen who are already permanent in terms of second proviso to Standing Orders (B)(I)(i) of the Standing Orders enforced under G.O. No. 2124 (ST) (iv)/XVIII, dated October 1, 1951, will (ipso facto) be covered by the above definition of "permanent workman".

(II) A "Seasonal workman" is one who is engaged only for the crushing season:--

Provided that if he is a retainer, he shall be liable to be called on duty at any time in the off-season and if he refuses to join or does not join, he shall lose his lien as well as his retaining allowance. However, if he submits a satisfactory explanation of his not joining duty, he shall only lose his retaining allowance for the period of his absence.

(III) A "temporary workman" is one who is engaged for work of a temporary or casual nature or to fill in a temporary need of extra hands on permanent, seasonal or temporary posts.

(IV) A "probationer" is one who is provisionally employed for a period to be specified by the management at the time of employment to fill a permanent vacancy or a new post of permanent nature and who may be confirmed at the completion of that period, if his services are found satisfactory. The probationary period shall not exceed six months:

Provided that if no period of probation is specified by the management at the time of employment, the period of probation shall be deemed to be six months:

Provided further that if after the expiry of the probationary period on orders are passed by the management, the probationer shall be deemed to have been confirmed.

(V) An "apprentice" is a learner who may be given a nominal allowance during the course of his training, to be fixed by the management concerned. The period of his apprenticeship will be such as may be fixed in the scheme approved by Government.

(VI) A "substitute" is one who is employed in place of a permanent or seasonal workman who is temporarily absent on leave or otherwise.

Clause K provides specific conditions of the Government employees of seasonal workman, which is extracted hereunder:

K. Special Conditions Governing Employment of Seasonal Workmen--

1. A seasonal workman who has worked or, but for illness or any other unavoidable cause, would have worked under a factory during the whole of the second half of the last preceding season will be employed by the factory in the current season.

Explanation-- Unauthorised absence during the second of the last preceding season of a workman has not been validly dismissed under these Standing Orders and of a workman who has been re-employed by the Management in the current season, shall be deemed to have been condoned by the Management.

2. Every seasonal workmen who worked during the last season shall be put up on his old job whether he was in the "R" shift or in any of the usual shifts.

However, if the exigencies of work so require, the management may transfer a workman from one job to another job or from one shift to another, including the "R" shift, so however, that the number of workmen so transferred does not exceed five percent. of total number of the employees of the factory and that the wages and status of such workmen is not affected in any way.

3. Where owing to trade reason or other reasons necessary for a bona fide lay-off, as given in Standing Order J, it becomes necessary for a factory so to do, it may discharge seasonal workmen before the close of the season with the previous permission of the State Labour Commissioner, or if he so directs, of a Deputy Labour Commissioner or the Regional Assistant Labour Commissioner of the area and after paying such compensation to the discharged workmen, as may be determined by the authority granting the permission.

18. From a perusal of the aforesaid, workers are classified as permanent, seasonal, temporary, probationer, apprentice and substitutes. A "permanent workman" is one, who is engaged on work which is of a permanent nature lasting throughout the year. A "seasonal workman" is one who has worked from the start of the crushing season till the end of the crushing season or who has worked during the whole of the second half of the last preceding season. A "temporary workman" is one, who is engaged for work, which is of a temporary or casual nature or to fill in a temporary need of extra hands on payment, seasonal or temporary post and a "substitute" is one who is employed in place of a permanent or a "seasonal workman" who is temporarily absent on leave or otherwise. A seasonal workman who has worked for the whole of the second half of the last preceding season is entitled to be given a notice requiring him to work in the ensuing season.

19. In the instant case, the stand of the workers is, that they were employed at the start of the crushing season and they worked till the end of the crushing season, for more than 10 years, and that they should be treated as seasonal employees, but, the employers were paying them wages of substitutes or of temporary employees and were not paying them retaining allowance.

20. On the other hand, the stand of the employers was that they were working

as "temporary" or "substitutes" and admitted that they were being paid the wages of a "temporary" or "substitute", but, denied the fact that they were working as a "seasonal employee" though admitting that these workers were working for more than 10 years.

21. In the light of the rival stand of the parties, the Labour Court was required to decide the validity and legality of the order of termination. In order to decide this question, it was necessary for the Labour Court to decide whether the workmen were engaged as "temporary workmen" or as "substitute workmen" or were engaged as "seasonal workmen". This issue with regard to the nature of the employment of the workmen is intrinsically woven, which is the subject-matter of the reference, namely, the validity and legality of the order of termination. This cannot be separated nor was the State Government required to make a separate or additional reference in addition to the reference so made.

22. Consequently, the contention of the petitioner that the Labour Court has travelled beyond the reference order is patently erroneous. The decisions cited by the learned counsel are distinguishable.

23. There is no quarrel with the proposition, namely, that the burden of proof is upon the person, who, files the claim. In the instant case, the dispute was referred at the instance of the workers and therefore, the burden was upon the workers to prove their case. Their case was that they were working from the start of the season till the end of the season, but, were being paid wages of a substitute or of a temporary workman. The workers were required to prove this fact. One of the workers deposed and stated that he and all the workers were employed from the start of the season till the end of the season and that they had been working in that capacity for several years. The witness has categorically deposed that they were never employed as substitutes, but, admitted that they were not being paid the retaining allowance. Once the witness has deposed, he has discharged his burden and the onus shift upon the employers to prove that they were working as substitute and not as a seasonal employee.

24. In the instant case, the Court finds that the workers had filed an application for production of the Attendance and Payment register. This was the best piece of evidence which would prove the actual number of days, which the workman had put in each crushing season. This evidence could not be produced by the workers, since these registers were maintained by the employers. The workers had filed an application for production of these records, which was conveniently opposed by the employers, on the ground, that the records have become very old and are not in a position to produce these records, quite apart from the fact that the employers also alleged that the production of records are irrelevant to the issue involved in the proceedings.

25. No doubt, records relating to 20 years were asked, but the record of preceding three years, from the date of the alleged termination, were also

summoned, which ought to have been produced by the employers, but, the same was not done. If the relevant records are not produced, an adverse inference can easily be drawn. The Court finds that the witness of the employers admitted that the workers were working for more than 10 years. The witness is, however, silent as to how many days these workers were working in a crushing season, but, admitted that these workers were paid the wages of an "unskilled workman". The witness in all probability was contending that wages of a substitute or temporary workman was being paid. The witness admitted that attendance was taken in Form 12. The Court is of the opinion, that the initial burden of the employers to prove their case was not discharged. The employers contended that these workers were working as substitute or temporary and, in order to prove this fact, the employers were required to produce their own register to show the number of days, which they had worked and the payment made to them. By not producing the evidence, the petitioners did not discharge their initial burden and when the onus shifted upon them, it became more relevant for the petitioners to discharge their burden, which they have miserably failed by non-production of the relevant documents. This leads to an irresistible conclusion that the workers were working since long.

26. The workers have filed a chart, which has been signed by the General Manager and was filed by the employers before the Deputy Labour Commissioner during the conciliation proceedings, indicating the working chart of the workers of the last 10 years preceding the date of their termination. Unfortunately, the Labour Court has not discussed anything on this vital piece of evidence nor has the chart being produced by either of the parties before this Court and, therefore, this Court is not in a position to judge as to whether the workers had worked for more than the second half of the crushing season or had worked from the start of the crushing season till the end of the crushing season.

27. But, this much is clear that the workers were working in some capacity or the other for the last 10 years preceding the date of the order of termination. The Labour Court also gave a finding that the workers were working as seasonal employees. Since the factory has closed down, the Labour Court awarded the compensation @ Rs. 75,000/- per workman holding that the seasonal workers were getting Rs. 5,500/- per month.

28. In the light of the aforesaid and having heard the learned counsel for the parties and having considered the evidence, the Court is of the opinion, that the order of the Labour Court holding that the order of termination was illegal, was perfectly correct and justified. The Labour Court was also justified in awarding compensation since it found that the factory had closed down.

29. The Court, however, finds that the Labour Court has committed an error in holding that a seasonal workman was getting Rs. 5500/- per month, which is based on no evidence. Calculation of Rs. 75,000/- per workman, as compensation, is also based on no evidence nor any reasoning has been given.

30. On the other hand, the workmen had contended that they have been paid Rs. 4,200/-per month. The Court also finds that the factory was running at a loss. The matter was referred to BIFR and eventually the factory was closed down irrevocably. The permanent employees were paid under the Voluntary Retirement Scheme.

31. Considering the fact, that if the dispute had not arisen, the workers would have worked in the same capacity from 1999 to 2008 when the factory was closed down. This Court is of the opinion, that it would serve the interest of both the parties if the compensation is reduced. Considering the aforesaid, the Court hereby directs that instead of Rs. 75,000/-, a sum of Rs. 50,000/- would be the appropriate compensation to be paid to each of the workers.

32. In the light of the aforesaid, the award of the Labour Court is affirmed subject to the aforesaid modification.

33. The writ petition is partly allowed. The amount shall be paid by the petitioners to the workers concerned within two months from today.